



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

Analysis of Enrolled House Bill 5681

Topic: Non-profit Corporations
Sponsor: Representative Tobocman
Co-Sponsors: Representative Huizenga
Committee: House Commerce
Senate Economic Development & Regulatory Reform

Date Introduced: January 31, 2008

Date Enrolled: June 27, 2008

Date of Analysis: June 18, 2008

Position: The Department of Labor & Economic Growth supports the bill.

Problem/Background: The nation has a long history of association, which was noted by French political thinker Alexis DeTocqueville after his travels in the United States in the 1830's. This tradition is reflected in Michigan's robust non-profit sector. A 1999 study by Public Sector Consultants noted assets exceeding \$60 billion, annual spending of \$28 billion, 95 percent of which remains in the state, 380,000 direct jobs, and \$10 billion in personal income. Although some non-profit organizations may be quite large, the vast majority of organizations are small with revenues of less than \$1,000,000 and a high proportion with revenues under \$25,000. The Public Sector Consultants 2002 publication *Michigan In Brief: 2002-3* quotes National Center for Charitable Statistics data from 1999 that there were 23,640 registered 501 (c) (3) organizations in Michigan, less than a third of which met the Internal Revenue Service threshold for regular reporting.

Non-profit associations may choose to incorporate under Michigan law by submitting documents to the Corporation Division in the Michigan Department of Labor & Economic Growth. A group that holds assets in Michigan or solicits funds is also required to register with the Charitable Trust Section in the Department of Attorney General.

Michigan's law in this area goes back at least to 1821. The current law dates back to 1982 but has not kept pace with developments relating to operation and governance in the non-profit sector. Board accountability, board member self-dealing, and dissolution of charitable corporations without notice have emerged as significant problems in the non-profit sector.

OFFICE OF POLICY & LEGISLATIVE AFFAIRS
OTTAWA BUILDING • P.O. BOX 30004 • LANSING, MICHIGAN 48909-7504
www.michigan.gov • (517) 241-4580

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Description of Bill: The bill amends the Non-profit Corporation Act. Three significant policy changes are made in the act. First, boards of directors would be required to consist of at least three persons. Currently, a non-profit corporation may be created with only one person on the board. Second, loans to directors would be prohibited, except in cases where the director is also a client and the loan is necessary to carry out the organization's charitable mission. Third, a charitable purpose corporation would be required to notify the Attorney General within 60 days if it dissolves. No assets may be disposed of without written approval of the Attorney General.

Summary of Arguments

Pro: The provisions of the bill will go a long way to promote best practices, increase accountability, and promote trust in the non-profit sector.

Con: The rationale for requiring at least three board members is not convincing. Many other states, including Delaware, do not have such a requirement. As a practical matter, many corporations will get around it by appointing "straw persons" to the board. This will do little to increase accountability.

The requirement that the Attorney General be notified if a corporation is dissolved is sound in theory but unlikely to work in practice. Most corporations do not bother to file a certificate of dissolution in the event that they cease to exist. They merely stop filing the required annual reports. The law provides that corporations failing to file their annual report in two consecutive years are automatically dissolved. A notice of impending dissolution is sent to the resident agent 90 days prior to the expiration of the filing grace period. In most cases, the notice is returned to us as undeliverable. The proposed amendment is not likely to change this.

Fiscal/Economic Impact: The bill will have no fiscal impact on the department, the state, or local governments.

Other State Departments: The Department of Attorney General is affected by this bill.

Any Other Pertinent Information: The bill is supported by the Michigan Nonprofit Association. There was no other testimony.

Administrative Rules Impact: There is no administrative rulemaking authority related to this act.